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2 **So Ordered.**



3 *Frank L. Kurtz*  
4 Frank L. Kurtz  
5 Bankruptcy Judge

6 **Dated: September 14th, 2012**

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12 **UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON**

13 In re:

14 MASQUERADE WINE COMPANY, LLC,

15 Debtor.  
16  
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)  
)  
) Case No. 11-03909-FLK11

)  
) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
)  
)

18 This matter having come before the above-entitled Court for confirmation of the Debtor's  
19 Plan of Reorganization and final approval of the Debtor's Disclosure Statement, which hearing  
20 was held on the 14<sup>th</sup> day of September 2012, and the Court having read the declarations of  
21 William Kimmerly, owner of the Debtor, and having reviewed the Debtor's Plan and Disclosure  
22 Statement and having heard the arguments of counsel, makes the following:

23 **FINDINGS OF FACT**

24 1. The Debtor filed the above-captioned Chapter 11 proceeding on August 8, 2011.

25  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 1

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1           2. The Court entered its Order Granting Application to Approve Employment of Hames,  
2 Anderson, Whitlow & O'Leary, P.S. as attorneys for the Debtor on September 1, 2012.

3           3. The Debtor filed its Motion for Order Conditionally Approving Disclosure Statement  
4 on July 6, 2012.

5           4. The above-entitled Court conducted a hearing on the Motion to Conditionally Approve  
6 Disclosure Statement on July 17, 2012. The Order Granting the Motion to Conditionally  
7 Approve the Disclosure Statement and Setting Schedule was entered on July 17, 2012.

8           5. The Conditionally Approved Disclosure Statement and Plan of Reorganization were  
9 filed July 24, 2012, Docket numbers 125 and 126. Pursuant to the Order Granting the Motion to  
10 Conditionally Approve the Disclosure Statement and Setting Schedule, the Debtor transmitted  
11 the Conditionally Approved Disclosure Statement, Plan of Reorganization, List Classifying  
12 Claims and Interests and Ballot of Accepting or Rejecting the Plan of Reorganization to all  
13 parties on the master mailing list on July 24, 2012.

14           6. On August 22, 2012, Creditor Gamache Vintners LLC ("Gamache") filed an Objection  
15 to the Debtor's Plan of Reorganization. On August 31, 2012, Gamache filed a Motion for  
16 Allowance of Administrative Expenses.

17           7. On August 29, 2012, the Court conducted a status conference on Confirmation, and  
18 scheduled the final hearing for resolution of Gamache's Objection to Debtor's Plan of  
19 Reorganization, Motion for Allowance of Administrative Expenses, Confirmation of Debtor's  
20 Plan of Reorganization and final approval of the Debtor's Disclosure Statement, in open court,  
21 on September 7, 2012. At the hearing the Court continued the confirmation hearing to September  
22 14, 2012, and requested the Debtor bring its Monthly Operating Reports up to date, and  
23 demonstrate the ability, and a proposal for payment of administrative claims. The court also  
24 entered an Order awarding Gamache an administrative claim totaling \$10,857.00.  
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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 2

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1 8. Prior to the hearing on September 14, 2012, the Debtor filed its June and July Monthly  
2 Operating Reports.

3 9. At confirmation, the Debtor, through testimony provided by its managing member,  
4 William Kimmerly, demonstrated to the Court's satisfaction the Debtor's ability to fund the Plan  
5 and pay its administrative claims.

6 10. The Plan has been proposed in good faith and not by means forbidden by law.

7 11. Payments to be made by the Debtor to its attorneys for services, costs and expenses in  
8 connection with the case have been approved or will be submitted for approval by the Court after  
9 notice and hearing.

10 12. After confirmation of the Plan, the Debtor will continue operating its business under  
11 the management of William and Jennifer Kimmerly, whose identity and compensation have been  
12 disclosed by Notice thereof filed August 18, 2011, Docket number 15. The continuance in office  
13 of such individuals is consistent with the interests of creditors, equity security holders and public  
14 policy.

15 13. The Plan proposes three classes of Creditors:

16 a. Class I consists of the impaired claim of Red Mountain Properties, LLC, d/b/a  
17 Monte Scarlatto Vineyard and Joel Mackay ("Red Mountain"). Treatment of Red Mountains  
18 claim will be dictated by the settlement agreement between it and the Debtor upon final court  
19 approval. Red Mountain's claim will be paid in full under the terms of that Settlement  
20 Agreement.

21 b. Class II consists of the impaired claims of the General Unsecured Creditors of  
22 the Debtor, which will be paid in full under the Plan. Class II includes creditor Telquist Ziobro &  
23 McMillen, PLLC, which has a claim constituting 81.27% of the class. Telquist Ziobro &  
24 McMillen, PLLC filed a ballot accepting the Debtor's Plan on August 21, 2012. The Debtor  
25 proposes to modify paragraph 4.02 of its Plan, to read as follows:

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 3

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1 The general unsecured creditors will be paid in full. With the exception of the  
2 unsecured claim owed to William Kimmerly in the amount of \$275,000, the  
3 general unsecured creditors shall receive monthly pro-rata distributions from the  
4 available revenue of the Debtor during the term of the Plan after the case is closed  
and after payments of the fee owed to the U.S. Trustee under 28 U.S.C. § 1930.  
After the allowed claims of general unsecured creditors other than William  
Kimmerly are paid in full, the Debtor will commence payment to Mr. Kimmerly.

5 c. Class III consists of the unimpaired Equity Interests of William and Jennifer  
6 Kimmerly. The Plan states they shall retain their interest through the effective date of the Plan.

7 14. The Plan provides for treatment of administrative claimants in paragraph 3.02. The  
8 Debtor proposes to modify paragraph 3.02 of the Plan to read as follows:

9 The allowed administrative expense claim of Hames, Anderson, Whitlow &  
10 O'Leary, P.S., shall be paid under such terms agreed to by the Debtor and its  
11 legal counsel. The allowed administrative expense claim of Gamache Vintners in  
12 the amount of \$10,857.00 will be paid in four equal quarterly payments of  
13 \$2,714.25. The first payment will be made upon confirmation. The second  
14 payment will be made on or before December 31, 2012. The third payment will  
15 be made on or before March 31, 2012. The fourth and final payment will be made  
16 on or before June 30, 2012. Gamache will release the wine and any of the  
17 Debtor's equipment in its possession upon confirmation. The Debtor grants  
Gamache a first position security interest in the Debtor's equipment described as  
follows: 1994 Hyster SS Forklift, 2200 liter stainless steel fermenters (2),  
Destemmer-crusher, Glycol chiller unit, Wine pump, Analytical wine tasting  
equipment, Barrels and Barrel rack, Polyethylene cage tanks, Stainless steel kegs,  
Pallet Jack, Commercial Dishwasher, Three compartment stainless steel sink, and  
Refrigerator.

18 15. Confirmation of the plan is not likely to be followed by the liquidation, or the need  
19 for further financial reorganization of the Debtor.

20 16. The Plan provides for payment of all allowed administrative claims upon the Plan's  
21 effective date, or under such terms of payment agreed to by such administrative claimant.

22 17. The Plan provides for the payment of all US Trustee's fees, when due, through the  
23 closing of the case.

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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 4

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1 18. The Plan does not discriminate unfairly, and is fair and equitable, with respect to each  
2 class of claims or interests that is impaired under the Plan.

3 19. No objections were filed to the Debtor's Conditionally Approved Disclosure  
4 Statement.

5 20. The Debtor's Conditionally Approved Disclosure Statement contains adequate  
6 information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the  
7 nature and history of the Debtor and the condition of the Debtor's books and records, that would  
8 enable a hypothetical investor typical of the holders of claims in the case to make an informed  
9 judgment about the Plan.

10 The Court having made and entered its foregoing FINDINGS OF FACT, now makes the  
11 following:

#### 12 CONCLUSIONS OF LAW

13 1. The Plan complies with the applicable provisions of Title 11 U.S.C.

14 2. The proponent of the Plan has complied with the applicable provisions of Title 11  
15 U.S.C.

16 3. The Plan was proposed in good faith, does not discriminate unfairly and is fair and  
17 equitable with respect to each class of claims.

18 4. Paragraph 4.02 of the Plan should be modified to read as follows:

19 The general unsecured creditors will be paid in full. With the exception of the  
20 unsecured claim owed to William Kimmerly in the amount of \$275,000, the  
21 general unsecured creditors shall receive monthly pro-rata distributions from the  
22 available revenue of the Debtor during the term of the Plan after the case is closed  
23 and after payments of the fee owed to the U.S. Trustee under 28 U.S.C. § 1930.  
24 The Debtor will commence payments to Mr. Kimmerly after the allowed claims  
25 of the other general unsecured creditors are paid in full.

5. Paragraph 3.02 of the Plan should be modified to read as follows:

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 5

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3 counsel. The allowed administrative expense claim of Gamache Vintners in the  
4 amount of \$10,857.00 will be paid in four equal quarterly payments of \$2,714.25.  
5 The first payment will be made upon confirmation. The second payment will be  
6 made on or before December 31, 2012. The third payment will be made on or  
7 before March 31, 2012. The fourth and final payment will be made on or before  
8 June 30, 2012. Gamache will release the wine and any of the Debtor's equipment  
9 in its possession upon confirmation. The Debtor grants Gamache a first position  
10 security interest in the Debtor's equipment described as follows: 1994 Hyster SS  
11 Forklift, 2200 liter stainless steel fermenters (2), Destemmer-crusher, Glycol  
12 chiller unit, Wine pump, Analytical wine tasting equipment, Barrels and Barrel  
13 rack, Polyethylene cage tanks, Stainless steel kegs, Pallet Jack, Commercial  
14 Dishwasher, Three compartment stainless steel sink, and Refrigerator.

9 6. The Debtor's Plan should be confirmed.

10 7. The Conditionally Approved Disclosure Statement complies with applicable provisions  
11 of Title 11 U.S.C. and contains adequate information.

12 8. The Debtor's Conditionally Approved Disclosure Statement should receive final Court  
13 approval.

14 /// END OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ///

15 Presented by:  
16 HAMES, ANDERSON, WHITLOW & O'LEARY  
17 Attorneys for Debtor-in-Possession

18 BY: /s/ John W. O'Leary  
19 John W. O'Leary, WSBA #33004  
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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 6

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